

**HARYANA REAL ESTATE REGULATORY AUTHORITY,
PANCHKULA.**

Complaint No. 307 of 2018

Date of Hearing: 06.12.2018

No. of Hearing: 6th

Lokesh Kumar and another

..... **Complainants**

Versus

M/s TDI Infrastructure Ltd.

..... **Respondent**

Coram:

1. Shri Rajan Gupta, Chairman
2. Shri Anil Kumr, Member


Appearance:

1. Shri Vikash Deep, Advocate for Complainants.
2. Shri Shobit Phutela, Advocate for Respondent

ORDER:

This matter had been listed five times earlier but could not be disposed of because the counsels of the parties kept requesting for adjournment. It was finally disposed off today after hearing both the parties.

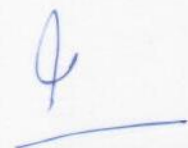
2. The case of the complainants is that on 16.05.2006 he booked a commercial Shop No.14 measuring 800 sq.ft., First Floor at Rodeo Drive, Mall-cum-Multiplex, at TDI City, Kundli, Sonapat, promoted by the



respondent. Total sale consideration of the shop was Rs.36.00 lakhs, against which initial booking amount of Rs.7.00 lakhs was paid on 16.05.2006 itself. On 5.6.2006 one allotment letter was issued by the respondents. Another about Rs.25.00 lakhs were deposited by the complainants between the year 2006 and 2013. Accordingly, nearly 90% of the total sales consideration stood deposited by year 2013. The payment has been duly acknowledged by the respondent by way of the Statement of Accounts issued on 05.01.2018. The grouse of the complainant is that even after lapse of 12 years the respondent has not completed the project and the condition of the property is such that it cannot be handed over.

Next grouse of the complainant is that the respondent has not cared to execute shop-buyer agreement upto December,2017. It was only on 16.12.2017 that the buyer's agreement was executed. It is a patently illegal act on the part of the respondent. The respondent has misused his dominant position and has not cared to respond to the request of the complainants even after receiving 90% of the payment since long.

3. The respondent in their written reply has not specifically denied any of the assertion of the documents produced by the complainants. Respondents have called themselves a highly reputed developer. They have also denied the jurisdiction of this Authority to entertain this



complaint for the reason that their project is not liable to be registered in terms of section 3 of the RERA Act. Further, that they had applied to the Director, Town & Country Planning Department vide letter dated 27.7.2017 for issuance of an occupation certificate and part completion of the residential colony. The respondent further states that they have offered fit out possession to the complainants vide letter dated 27th April,2018. Now that the fit out possession has been offered the complainants are wriggling out from the written contract signed in the year 2017. The respondent further states that the complainants have signed each and every page of the agreement, therefore, he is bound by it.

4. The written and verbal statements of both the parties have been examined in detail and the Authority observes and orders as follows:-

- (i) The plea of the respondent regarding lack of jurisdiction of this Authority cannot be accepted in view of the law laid down in complaint case No.144 of 2018-Sanju Jain Versus TDI Infrastructure Ltd. The logic and reasoning given in that case are fully applicable as the facts and circumstances of this case as well. It is an admitted fact that respondent have not yet obtained the occupation certificate. They have offered fit out possession without obtaining occupation certificate. Admittedly, the building is still not complete and



there are several subsisting obligation to be discharged by the respondent in respect of the project. Accordingly, this Authority has full jurisdiction to entertain this complaint and to pass orders as per law.

- (ii) Admittedly Rs.7 lakhs were received by the respondent in the year, 2006. Further substantial amount of money had been received upto the year 2011-12 and 90% payment had been received upto the year 2013. The respondent has no right to demand the entire consideration amount when the project was not likely to be completed even in next 5-6 years. After issuing allotment letter in 2006, the respondent was duty bound to execute a builder-buyer agreement within a reasonable period of time in which the date of handing over of possession should have been specified. The respondent chose not to execute the agreement even upto the year 2017. This certainly is an unethical, illegal and unconscious-able practice. Respondents have misused their dominant position least concerned with the plight by the complainant. Such an act was illegal before coming into force of RERA Act, and continues to be illegal now. For the



stated reason the relief demanded by the complainant deserves to be granted.

- (iii) During verbal discussions both the parties agreed that respondent will deliver possession of the shop to the complainants by 30th April, 2019. The complainant agreed to accept the offer subject to payment of compensation
- (iv) For the highly inordinate and unjustified delay caused by the respondent and for having adopted unethical practices, it will be in fitness of things that respondent shall pay compensation for delayed delivery of the shop to the complainants at the rates provided for in Rule 15 of the HRERA Rules. In the circumstances of the case, it is further ordered that delay compensation amount shall be separately paid by the respondent to the complainants within a period of 60 days, 50% in first 30 days and 50% in next 30 days. The respondent shall also issue a statement of accounts to the complainant within a period of 15 days showing therein the amount outstanding against the complainants and the compensation amount to be paid by the respondent to the complainant. The complainant will be at liberty to approach

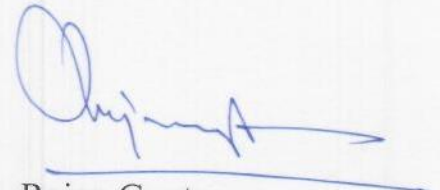


the Adjudicating Officer for claiming compensation on account of mental harassment etc.

Disposed of. File be consigned to the record room and orders be uploaded on the website of the Authority.



Anil Kumar Panwar
Member



Rajan Gupta
Chairman